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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

GRETCHEN BANEY,

Plaintiff,

v.

FIRST RESPONSE, INC.,

Defendant.

Case No. 3:13-cv-00453

COMPLAINT

(Title VII; ORS 659A.030; ORS
659A.199)

DEMAND FOR JURY TRIAL

Nature of the Action

1.

Plaintiff brings this action for monetary relief, damages, costs, punitive damages and attorney fees for herself to redress injuries done to her by Defendants or officers, employees or agents of said Defendant in violation of her federally protected rights in violation of the Civil Rights Act of 1964; Title VII; 42 U.S.C. § 2000e-5, and her state protected rights in violation of Oregon Revised Statute 659A.030 and 659A.199.

Jurisdictional Allegations

2.

The court has jurisdiction over Plaintiff's federal claims pursuant to 42 U.S.C. § 2000 *et seq.*, 28 U.S.C. §§ 1331, and supplemental jurisdiction over Plaintiff's state claims pursuant to 42 U.S.C. § 1367 as the state claims arise from the same nucleus of operative facts as the federal claims.

3.

Plaintiff filed timely claims with Oregon's Bureau of Labor and Industries ("BOLI") and the Equal Employment Opportunity Commission (EEOC) raising the issues alleged herein.

4.

Plaintiff has received the Notice of Right to Sue from BOLI authorizing Plaintiff to commence a civil action against the Defendants. Plaintiff has timely filed this lawsuit within the prescribed timelines in said Notice.

General Factual Allegations

5.

Defendant was and is at all times herein mentioned a corporation registered and doing business in the State of Oregon.

6.

Plaintiff was hired by Defendant on or about March 3, 2011. Defendant was constructively discharged on or about January 9, 2012.

7.

At all material times herein, Plaintiff was supervised by Defendant's employees or agents and Plaintiff relied on the actual or apparent authority of employees, supervisors and management for Defendant.

8.

Defendant discriminated against Plaintiff by engaging in and/or allowing a continuing course of conduct, including but not limited to sex discrimination. Plaintiff was treated differently than male colleagues, paid less than male colleagues for the same work, exposed to discriminatory comments based on her sex and the sex of other female co-workers, and disciplined when she reported sex discrimination and wage and hour violations; all of this created a hostile work environment.

9.

Defendant's conduct was sufficiently severe and pervasive to alter the conditions of Plaintiff's employment and create a hostile work environment. Defendant knew or should have known of the abusive work environment and failed to take prompt remedial action.

10.

Plaintiff complained to Defendant about the sex discrimination and hostile work environment. Defendant retaliated and discriminated against Plaintiff due to her complaints by disciplining and then constructively discharging her.

First Claim For Relief

Title VII -Discrimination

11.

Plaintiff realleges paragraphs 1 through 10.

12.

Defendant discriminated against Plaintiff in the terms and conditions of her employment, including but not limited to paying her less money than her male colleagues who were doing the same work and failing to give her the title of manager, on the basis of her sex in violation of Title VII.

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13.

As a result of being undercompensated by Defendant during her employment, Plaintiff has incurred lost wages and benefits in an amount to be proven at trial.

14.

Plaintiff is entitled to recover her costs and attorney fees pursuant to Title VII.

15.

As a direct and proximate result of Defendant's conduct Plaintiff has suffered and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of life all to her nonpecuniary loss in an amount to be determined at trial.

16.

Defendant's conduct was willful, malicious and/or done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages pursuant to 42 USC §1981A(a)(1) in an amount to be determined at trial.

Second Claim For Relief

ORS 659A.030(a)(b) -Discrimination

17.

Plaintiff realleges paragraphs 1 through 16.

18.

Defendant discriminated against Plaintiff in the terms and conditions of her employment, including but not limited to paying her less money than her male colleagues who were doing the same work, and failing to give her the title of manager, on the basis of her sex in violation of ORS 659A.030.

19.

As a result of being underpaid by Defendant during her employment, Plaintiff has incurred lost wages and benefits in an amount to be proven at trial.

20.

Plaintiff is entitled to recover her costs and attorney fees pursuant to ORS 659A.885.

21.

As a direct and proximate result of Defendant's conduct Plaintiff has suffered and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of life all to her nonpecuniary loss in an amount to be determined at trial.

22.

Defendant's conduct was willful, malicious and/or done with reckless indifference to Plaintiff's state protected rights. Defendant should be assessed punitive damages in an amount to be determined at trial.

Third Claim For Relief

Title VII – Hostile Work Environment

23.

Plaintiff realleges paragraphs 1 through 22.

24.

Defendant made discriminatory comments to Plaintiff that were based on her sex, including but not necessarily limited to saying it wanted to see "the Marine", "not just the girl." Plaintiff also became aware that Defendant made job placement decisions based on the fact that another female employee was "a mother".

25.

Defendant's conduct had the purpose and effect of creating an intimidating, hostile, and offensive work environment, and had the purpose and effect of unreasonably interfering with Plaintiff's work performance, and otherwise adversely affected her employment opportunities.

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26.

Defendant's creation of, and/or failure to prevent, the hostile work environment based on sex constitutes unlawful sexual harassment in violation of Title VII.

Fourth Claim For Relief

ORS 659A.030 – Hostile Work Environment

27.

Plaintiff realleges paragraphs 1 through 26.

28.

Defendant made discriminatory comments to Plaintiff that were based on her sex, including but not necessarily limited to saying it wanted to see “the Marine”, “not just the girl.” Plaintiff also became aware that Defendant made job placement decisions based on the fact that another female employee was “a mother”.

29.

Defendant's conduct had the purpose and effect of creating an intimidating, hostile, and offensive work environment, and had the purpose and effect of unreasonably interfering with Plaintiff's work performance, and otherwise adversely affected her employment opportunities.

30.

Defendant's creation of, and/or failure to prevent, the sex-based hostile work environment for Plaintiff constitutes unlawful sex harassment in violation of ORS 659A.030.

Fifth Claim For Relief

Title VII – Retaliation

31.

Plaintiff realleges paragraphs 1 through 30.

32.

Plaintiff complained to Defendant about the sex discrimination on behalf of herself

and another female employee. Plaintiff also complained to respondent about wage and hour violations on behalf of a co-worker who was not being paid for all hours worked.

33.

Defendant retaliated by cutting Plaintiff's job responsibilities, removing her from the chain of command, and writing her up on false pretenses. Defendant discriminated against Plaintiff in the terms and conditions of her employment in substantial motivating part due to Plaintiff's good faith opposition to unlawful employment practices which violated Title VII.

34.

Defendant's decision to constructively discharge Plaintiff was motivated in substantial part due to her opposition to unlawful employment practices that violated Title VII.

Sixth Claim For Relief

ORS 659A.030(f) – Retaliatory Discrimination

35.

Plaintiff realleges paragraphs 1 through 34.

36.

Plaintiff opposed unlawful employment practices. Plaintiff complained to Defendant about the sex discrimination on behalf of herself and another female employee. Plaintiff also complained to respondent about wage and hour violations on behalf of a co-worker who was not being paid for all hours worked.

37.

Defendant discriminated against Plaintiff by cutting her job responsibilities, removing her from the chain of command, and writing her up on false pretenses. Defendant's discrimination against Plaintiff in the terms and conditions of her employment was in substantial motivating part due to Plaintiff's good faith opposition to employment made unlawful by ORS 659A.030.

38.

Defendant's decision to constructively discharge Plaintiff was motivated in substantial part due to her opposition to unlawful employment practices that violated of ORS 659A.030.

Seventh Claim For Relief

ORS 659A.199 – Prohibited Conduct by Employer

39.

Plaintiff realleges paragraphs 1 through 38.

40.

Plaintiff in good faith reported to Defendant information that she believed was evidence of a violation of State or Federal law, rule, or regulation. Plaintiff complained to Defendant about the sex discrimination on behalf of herself and another female employee. Plaintiff also complained to respondent about wage and hour violations on behalf of a co-worker who was not being paid for all hours worked.

41.

Defendant retaliated by cutting Plaintiff's job responsibilities, removing her from the chain of command, and writing her up on false pretenses. Defendant's discrimination against Plaintiff in the terms and conditions of her employment was in substantial motivating part due to Plaintiff's reporting of violations of State or Federal law, rule or regulation, in violation of ORS 659A.199.

42.

Defendant's decision to constructively Plaintiff was motivated in substantial part due to her opposition to unlawful employment practices, in violation of ORS 659A.199.

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Prayer for Relief

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For permanent injunctive relief enjoining Defendants, their officers, employees and agents from engaging in any discrimination based on sex or for retaliating against any employee opposing unlawful employment practices;
2. Economic damages and future losses to be determined at trial;
3. Non-economic damages to be determined at trial;
4. Punitive damages in an amount to be determined at trial;
5. Reasonable costs and attorney fees;
6. For such other and further relief as the Court may deem just and equitable.

DATED this 15th day of March, 2013.

/s/ Aaron W. Baker
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